

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:06cv48**

DIANNE H. DORTON, as Personal)
Representative of the Estate of RANDALL)
ALEXANDER DORTON,)

Plaintiff,)

Vs.)

ORDER

HENDRICK MOTORSPORTS, INC.;)
JOHN P. TRACY, as Personnel)
Representative of the Estate of RICHARD)
EDWARD TRACY; and RICHARD M.)
MORRISON, as Personal Representative)
of the Estate of ELIZABETH LEE)
MORRISON,)

**Defendants and Third-
Party Plaintiffs,**)

Vs.)

THE UNITED STATES OF AMERICA,)

Third-Party Defendant.)

THIS MATTER is before the court on the United States of America's Motion for Substitution of Party (#2) and Motion for Change of Venue (#4). Defendants and Third-Party Plaintiffs have timely consented to those motions (documents #12 & #13), while plaintiff has interposed no objection within the time provided by the local rules. Such motions were filed on April 11, 2006, making any responses thereto due to be filed not later than April 28, 2006. L.R. 7.1.

As to substitution *eo nomine*, the United States has shown that the federal employees named as third-party defendants in the third-party Complaint have been certified by the Attorney General to have been acting within the scope of their employment at the time of the

alleged tortuous conduct. Inasmuch as the Attorney General has so certified, the United States of America is entitled to be substituted as the real party in interest in this matter as a matter of law. 28 U.S.C. § 2679(d)(2). Such dismissal of the federal employees and substitution of the United States of America in their stead is reflected in the caption of this Order.

Finally, the United States of America has moved an inter-district transfer of this matter to the Middle District of North Carolina. For cause, the United States of America has shown that the only appropriate venues for resolution of the claims against it are the district wherein the third-party plaintiffs resides and the district wherein the alleged tortuous acts occurred. 28 U.S.C. § 2401(b). Two of the third-party plaintiffs reside in the Middle District while the other resides in Vermont, and while the air crash occurred in the Western District of Virginia, the alleged tortuous acts of the United States of America occurred at the Greensboro Terminal Radar Arrival Control facility in Greensboro, North Carolina, which is also in the Middle District. While not a factor denoted by Section 2401(b), the United States of America has represented that a related case, Turner v. United States, 1:06cv223 (M.D.N.C.), is already pending in the Durham Division of the Middle District. Finding that good and adequate cause has been stated for transfer, and that the Middle District is an appropriate venue, the court will transfer this matter to the Middle District.

ORDER

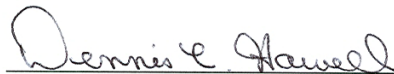
IT IS, THEREFORE, ORDERED that

- (1) the United States of America's Motion for Substitution of Party (#2) is **GRANTED** and the United States of America is **SUBSTITUTED** as the real party in interest for the named third-party defendants, and such named defendants are **DISMISSED** from

this action without prejudice as to third-party plaintiffs proceeding with such claims against the United States of America;

- (2) the United States of America's Motion for Change of Venue (#4) is **GRANTED**, and this matter is, respectfully, **TRANSFERRED** to the United States District Court for the Middle District of North Carolina for disposition. Such honorable court is advised that a related case, Turner v. United States, 1:06cv223 (M.D.N.C.), is already pending in the Durham Division; and
- (3) the Clerk of this court is, respectfully, instructed to send a copy of this Order to Honorable Graham C. Mullen, judge presiding in Lathram v. Hendrick Motorsports, Inc., 3:06cv172 (W.D.N.C.), which is a related case still pending in the Charlotte Division of this district.

Signed: May 1, 2006



Dennis L. Howell
United States Magistrate Judge

